Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

ISTITUTO PER LE OPERE DI RELIGIONE,
AN INSTRUMENTALITY OF A FOREIGN SOVEREIGN,

Petitioner,

v.

EMIL ALPERIN, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

JEFFREY S. LENA
Law Office of Jeffrey S. Lena
1152 Keith Avenue
Berkeley, CA 94708-1607
(510) 665-1713

MICHAEL R. DOYEN
DANIEL P. COLLINS*
Munger, Tolles & Olson LLP
355 South Grand Avenue
Los Angeles, CA 90071
(213) 683-9100

Counsel for Petitioner

*Counsel of Record

QUESTION PRESENTED

Whether claims to the undifferentiated assets held in a foreign treasury that was enriched by innumerable acts of looting and atrocity committed by the Nazis and their allies throughout World War II present nonjusticiable political questions (a) for which there are no judicially manageable standards and (b) whose resolution is constitutionally committed to the political branches.

PARTIES TO THE PROCEEDINGS

The petitioner is *Istituto per le Opere di Religione* (a defendant below). The respondents (plaintiffs below) are: Emil Alperin; Vladimir Brodich; Vladan Celebonovic; Milja Conger; Maria Dankewitsch; Mladen Djuricich; William Dorich; Robert Predrag Gakovich; Fred Zlatko Harris; Allen Dolfi Herskovich; Bogdan Kljaic; Lizabeth Lalich; David Levy; Nevenka Vukasovic Malinowski; Veljko Miljus; Vladimir Morgunov; Igor Najfeld; Koviljka Popovic; Daniel Pyevich; Jewgenija Romanova; Eli Rotem; Zdenka Baum Ruchwarger; Milorad Skoric; Desa Tomasevic Wakeman; International Union of Former Juvenile Prisoners of Fascism of Ukraine, Russia, and Belarus; Jasenovac Research Institute; Organization of Ukrainian Antifascist Resistance Fighters; and Ukrainian Union of Nazi Victims and Prisoners.

A separate petition for certiorari has been filed by the Order of Friars Minor (which was also a defendant below); that petition has been docketed as No. 05-326. The Swiss National Bank was originally named as a defendant in this action but was voluntarily dismissed by plaintiffs in the district court and did not participate in the proceedings in the court of appeals. The Croation Liberation Movement (*Hrvatski Oslobodilacki Pokret*) was named as a defendant and was purportedly served, but it has never appeared in the action. The district court dismissed the claims against the Croatian Liberation Movement for lack of personal jurisdiction and the court of appeals affirmed that decision.

RULE 29.6 STATEMENT

Petitioner *Istituto per le Opere di Religione* (IOR) is a separate, public juridical person located within the territory of the State of Vatican City under the sovereignty of the Holy See. While this Court's Rule 29.6 would not appear applicable to the IOR (because it is not a "nongovernmental" entity), counsel states that the IOR has no "parent corporations" nor is there any "any publicly held company that owns 10% or more of the [IOR]'s stock."

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Petitioner *Istituto per le Opere di Religione* (IOR) respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The amended opinion of the court of appeals (App., *infra*, 1a-62a) is reported at 410 F.3d 532. The district court's opinion dismissing the claims against the IOR and the Order of Friars Minor (OFM) (App., *infra*, 63a-79a) is reported at 242 F. Supp. 2d 686. The district court's opinion dismissing the claims against the Croatian Liberation Movement (*Hrvatski Oslobodilacki Pokret*) (App., *infra*, 80a-89a) is unreported.

JURISDICTION

The court of appeals initially entered its judgment on April 18, 2005. On June 9, 2005, the court amended its opinion and simultaneously entered an order denying the petitions for panel and en banc rehearing filed by the IOR and the OFM. App., *infra*, 90a. On August 18, 2005, Justice O'Connor extended the time within which to file a petition for certiorari to October 22, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The following provisions of the United States Constitution commit the war powers and the foreign affairs powers to the political branches:

Article I, § 8, provides that "[t]he Congress shall have Power . . . [¶] To regulate Commerce with foreign Nations . . .; [¶] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; [¶] To raise and support Armies . . .; [and] [¶] To provide and maintain a Navy; . . . ."

Article II, § 1, states that "[t]he executive Power shall be vested in a President of the United States of America . . . ." Section 2 provides that "[t]he President shall be Commander in Chief of the Army and Navy of the United States," and that "[h]e shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . . ." Section 3 vests in the President the authority to "receive Ambassadors and other public Ministers."

STATEMENT

1. Respondents are 24 individuals and four organizations who seek to represent a class of several hundred thousand victims who suffered atrocities in Croatia (within the former Yugoslavia) and Ukraine (within the former Soviet Union) at the hands of the "Ustasha" regime that was established by German occupation forces in Croatia and which "operated under German protectorate from 1941 through 1945." C.A. Excerpts of Record (ER) 18; App., *infra*, 9a. Specifically, respondents allege that, during World War II, they or their friends and families suffered "physical, monetary and/or property losses including slave labor," either as a result of "the systematic and brutal extermination of [J]ews, Serbs, and Romani by the Nazi puppet regime" in Croatia or "as a result of the occupation of the former Soviet Union by Croatian military forces in concert with their German occupation forces." ER 2.

Respondents' complaint does *not* allege that the IOR committed any of these acts; indeed, the IOR is not mentioned at all in the section of the complaint detailing these wartime atrocities. ER 6-15. Rather, all of the atrocities and thefts are alleged to have been committed by the Croatian Ustasha regime, by German Nazi forces, or by other "allied Fascists believed to be Croatians." *Id.* at 6. The IOR itself is nowhere alleged to have participated in the Croatian or German governments' acts of violence and plunder. Instead